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Technical assistance and capacity-building

Human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, submitted pursuant to resolution 36/30 of the Human Rights Council, the United Nations High Commissioner for Human Rights reports on the human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo between June 2017 and May 2018. He assesses, among other things, the progress made by the Government in implementing previous recommendations by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations human rights mechanisms.

The High Commissioner commends the efforts of the Congolese authorities to combat impunity, and also to combat sexual violence. In this respect, he notes the convictions handed down on senior military officers for acts constituting human rights violations, including war crimes and crimes against humanity. He also notes the establishment by the Government of a joint commission to investigate human rights violations committed in connection with the demonstrations of 31 December 2017 and 21 January 2018.

At the same time, however, the deterioration of the human rights situation across the country is very worrisome, in particular the marked increase in violations of civil and political rights and fundamental freedoms throughout the country in connection with the elections scheduled for December 2018 and the resurgence of violations and abuses linked to the activism of armed groups and operations of the defence and security forces in conflict-affected areas.

The High Commissioner invites the Government of the Democratic Republic of the Congo to implement all the recommendations set out in the present report and reaffirms the commitment of his Office to supporting the authorities in their efforts to promote and protect human rights.

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I. Introduction

1. In the present report, pursuant to Human Rights Council resolution 36/30 on technical assistance and capacity-building for human rights in the Democratic Republic of the Congo, the United Nations High Commissioner for Human Rights provides an overview of the human rights situation and the activities of OHCHR carried out in the country through the United Nations Joint Human Rights Office between June 2017 and May 2018.

2. In the report, the High Commissioner emphasizes the key human rights developments, including in the context of the elections, assesses the progress made in the implementation of his recommendations and those made by the United Nations mechanisms for the protection of human rights, and submits recommendations for the attention of the Government.

II. Principal human rights developments

3. The human rights situation continued to deteriorate throughout the territory of the Democratic Republic of the Congo during the reporting period. Overall, the number of human rights violations and abuses documented by the Joint Human Rights Office has increased by almost 20 per cent compared to the previous reporting period. More than 63 per cent of the violations were committed by State officials, primarily members of the armed forces of the Democratic Republic of the Congo (FARDC) and officers of the Congolese national police. The continued increase in violations of civil and political rights and fundamental freedoms in the context of the elections, and also of violations related to the increased activism of militias and armed groups in the provinces in conflict, is particularly worrying.

4. As the new election date of December 2018 approaches, restrictions on civil liberties, intimidation and violence against political opponents, journalists and other media personnel and civil society activists, including human rights defenders, have been stepped up. Demonstrations organized by opposition political parties and civil society organizations, including in protest at the postponement of the elections and the failure to implement any measures to reduce political tensions, have routinely been banned by the authorities and brutally suppressed by the defence and security services. In the course of this action to break up demonstrations, many people have been killed and a number of others injured. The democratic space has thus been severely limited and the conditions are scarcely conducive to free, inclusive, peaceful and credible elections.

5. The proliferation of militias and armed groups and the increased activities of the latter have contributed to the increase in abuses of human rights and international humanitarian law in the provinces in conflict — in particular in North Kivu — and also to the increase in violations committed by the defence and security forces in the course of their operations against these groups.

6. The period was also marked by the continuation or recurrence of intercommunal violence, in particular in the provinces of Ituri, Tanganyika and Haut-Katanga, and also in the Kasaï provinces (Kasaï, Kasaï Central and Kasaï Oriental). The geographical spread of conflicts could be observed in particular in Maniema, where the activism of Mai-Mai groups and the disproportionate response by FARDC units led to serious violations of human rights and international humanitarian law.

7. Despite the limited legislative progress in the protection of human rights, there have been notable efforts to combat impunity, including through legislative steps taken during the previous reporting period. For example, judgments handed down on senior officials for war crimes and crimes against humanity are indicative of new legal possibilities offered by the harmonization of the country's legislation with the Rome Statute of the International Criminal Court. Another encouraging development is the establishment by the Government of a joint commission to investigate alleged human rights violations committed in connection with the demonstrations of 31 December 2017 and 21 January 2018.

A. Human rights and fundamental freedoms in the context of elections

8. In its consideration of the previous periodic report submitted by the Democratic Republic of the Congo, the Human Rights Committee of the United Nations called on the Government to respect the constitutional right of every citizen to participate in public affairs and to take all necessary measures in order to increase the participation of women in public life, in particular their representation at the highest levels of Government (see CCPR/C/COD/CO/4, paras. 16 and 48). The Committee also recommended legislative measures to ensure that any restriction on the exercise of freedom of expression complied with the strict requirements set out in the International Covenant on Civil and Political Rights. It also recommended the investigation, prosecution and conviction of persons responsible for harassment, threats or intimidation against journalists, political opponents and human rights defenders (ibid., para. 40). In addition, the Committee called for the decriminalization of media offences and the offence of insulting the Head of State and the adoption of measures to guarantee the rights of all persons to the protection and promotion of human rights. The Committee also called for the harmonization of the legislative framework with the Constitution to guarantee the right to peaceful assembly and to prevent and eliminate all forms of excessive use of force by officers of the police and security services (ibid., paras. 40, 42 and 44).

9. During the reporting period, the special procedures of the Human Rights Council called on the Government, on two occasions, to put an end to violations of civil and political rights and to the widespread climate of repression against civil society.[1] Some delegations also expressed concern regarding the bill to regulate the work of non-governmental organizations[2] and requested the Government to take all the necessary measures to ensure that its provisions and their implementation did not violate the freedoms of expression, association and peaceful demonstration (see COD/2/2017, 15 November 2017).

1. Current situation and action taken by the Government

10. The sharp increase in the number of violations of civil and political rights continues to threaten the democratic environment and the credibility of the electoral process as the elections scheduled for 23 December 2018 draw near. Between June 2017 and May 2018, the United Nations Joint Human Rights Office in the Democratic Republic of the Congo documented 1,466 violations associated with restrictions on democracy throughout the country, representing a 35 per cent increase over the previous period (1,080 violations), almost half of which were committed by Congolese national police officers.

11. The opening up of democratic space is critical to an electoral process which is inclusive, transparent, peaceful and credible. Despite repeated commitments in this regard, the Congolese authorities have continued to impose more and more restrictions, both disproportionate and unjustified, on public freedoms. Acts of violence, threats, harassment and intimidation against persons perceived as critical of the regime have increased, targeting in particular the leaders or members of opposition parties, civil society activists, human rights defenders and journalists and other media personnel.

12. While there have been releases of political prisoners and prisoners of conscience during the reporting period, there has been no progress on the high-profile cases mentioned in the Global and All-Inclusive Agreement of 31 December 2016. The Minister of Justice has taken measures for the granting of parole and unconditional release,[3] but has excluded the offences for which political prisoners and prisoners of conscience are usually

[1] See UA COD 2/2018, 26 January 2018 (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23600) and UA COD 3/2018, 27 February 2018 (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23645).

[2] Bill amending and supplementing Act No. 004/2001 of 20 July 2001 on general provisions applicable to non-profit organizations and public service institutions.

[3] See the report of the twelfth extraordinary meeting of the Council of Ministers (www.pp-drcgov.net/compterendus.php).

prosecuted. At least 143 political prisoners and prisoners of conscience, including 12 women, were still in detention when this report was drafted.

13. In addition, incommunicado detentions persist, imposed by the security services and the National Intelligence Agency, including for long periods and without any judicial oversight. These detentions are targeting, among others, civil society campaigners and activists from opposition parties.

14. In addition, arrests and convictions in connection with the exercise of fundamental freedoms have continued. During the reporting period, the Joint Human Rights Office has documented arbitrary arrests and other violations of the right to liberty and security of person against 2,252 victims, including at least 103 women, in the exercise of their rights to freedoms of expression and opinion, demonstration and peaceful assembly or association. Several of these arrests were followed by convictions by the courts, indicating that the courts are being used for political purposes. Media offences and the offence of insulting the Head of State remain on the statute book and continue to lead to convictions.

15. By contrast, few officials have been convicted for deeds constituting violations of civil and political rights or fundamental freedoms.

16. Threats and intimidation against journalists and disproportionate restrictions of freedom of expression by the authorities have continued, with at least 90 journalists experiencing violations during the reporting period. In addition, on 3 August 2017, the Ministry of Communication and Media cancelled the accreditation of the Reuters correspondent in the Democratic Republic of the Congo. The Ministry has also restricted the freedom of movement of foreign journalists, requiring them to obtain prior authorization before travelling outside Kinshasa. On 10 May 2018, the authorities expelled two foreign journalists for breach of these procedures.

17. The jamming of certain radio stations, including Radio France Internationale (whose signal was restored in August 2017 after being blocked for nine months) and Radio Okapi, along with the suspension of Internet and text messaging services throughout the country also continued, in particular during major peaceful demonstrations, impeding the freedoms of expression and of the press.

18. While the Government announced the lifting of the general ban on demonstrations, including during the thirty-seventh session of the Human Rights Council, in March 2018, the authorities have continued severely to restrict the right to freedom of peaceful assembly, including through such measures as the general prohibitions on demonstrations imposed by local authorities in a number of cities and provinces. These policies are intrinsically disproportionate, as they are adopted without any consideration of the specific circumstances of each proposed meeting. They are therefore at variance with international human rights law and the Constitution of the Democratic Republic of the Congo. In addition to the general prohibitions, local authorities have regularly banned demonstrations about which they had been notified in compliance with the Constitution.

19. The Joint Human Rights Office has continued to monitor the implementation of discriminatory measures relating to the authorization of demonstrations. While demonstrations by the opposition tend to be prohibited, those organized by the presidential majority are normally permitted. Where opposition parties and civil society organizations have been able to organize demonstrations, notably those calling for the implementation of the Global and All-Inclusive Agreement of 31 December 2016 and for the holding of elections, these have routinely been suppressed by the authorities, including through the illegal use of force by the security and defence forces.

20. The High Commissioner condemns the violent suppression of protests and violations committed in impeding the legitimate exercise of fundamental freedoms. During the countrywide demonstration organized on 31 July, 15, 28 and 30 November, 19 and 31 December 2017, and 21 January and 25 February 2018, the actions of the defence and security forces resulted in the deaths of at least 19 persons (including at least two women), at least 251 persons were injured (including at least eight women) and at least 1,040 people were arbitrarily arrested (including at least 11 women). The High Commissioner notes that some efforts have been made to establish criminal liability, such as the sentencing of a

police officer to life imprisonment for murder, attempted murder, diversion of ammunition, illegal possession of a weapon of war and disobeying instructions on 26 February 2018 in Mbandaka (Equateur Province).

21. The establishment by the Government of a joint commission to investigate alleged human rights violations committed in connection with the demonstrations of 31 December 2017 and 21 January 2018, which completed its work on 10 March 2018, has been an encouraging development. The commission, supported by the Joint Human Rights Office, drew up relevant recommendations in response to the violations that had been committed and to guarantee the exercise of fundamental freedoms. The Commission stressed the need for criminal investigations to be carried out into the violations and human rights abuses committed in connection with the demonstrations, and also for the provision of medical care and the establishment of a compensation fund for the victims. At the time of writing of the present report, implementation of these recommendations remained limited.

22. The High Commissioner regrets that the provisions of the act on the protection and accountability of human rights defenders, passed by the National Assembly on 20 November 2017, have the effect of restricting the activities of human rights defenders, rather than protecting them. The bill on non-profit associations and public service institutions, under consideration by the political, administrative and judicial committee of the National Assembly, continues to raise concerns, including those prompted by the overly burdensome administrative requirements, the State's discretionary powers over the registration of associations, the lack of judicial oversight and restrictions on funding. Lastly, no progress has been made towards adoption of the bill establishing modalities for ensuring the freedom to demonstrate and the right of access to information.

23. Scant progress has been made in enhancing the role of women in the electoral process. The new electoral act, which was promulgated on 24 December 2017, lacks any provision making the admissibility of the lists submitted by political parties conditional upon the inclusion of a minimum quota of women candidates. All the same, during the voter identification and registration exercise, followed by the cleaning up of the electoral rolls, the registration rate of women was 51 per cent.

2. Action taken by the Joint Human Rights Office

24. The Joint Human Rights Office has continued its documentation work and has followed up alleged violations of human rights during the electoral process and also the situation of political prisoners and prisoners of conscience.

25. The Joint Human Rights Office submitted a number of recommendations with a view to opening up the democratic space, ensuring compliance with both national and international rules and standards regarding the use of force, and combating impunity for the perpetrators of human rights violations, based on the report on the use of illegal, unjustified and disproportionate force in the management of public demonstrations in the Democratic Republic of the Congo from January 2017 to January 2018, jointly published by OHCHR and the Mission of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).[4]

26. The Joint Human Rights Office has also alerted the Government to the lack of progress in the implementation of the recommendations set out in two investigation reports issued by OHCHR and MONUSCO in 2017 on human rights violations committed in connection with the demonstrations of 19–21 September 2016 in Kinshasa and 19 December 2016 across the entire country.[5]

[4] See www.ohchr.org/Documents/Countries/CD/BCNUDH-Report_March2018.pdf.

[5] Report on human rights violations in the Democratic Republic of the Congo in the context of the events of 19 December 2016 (www.ohchr.org/Documents/Countries/CD/UNJHRO December2016_en.pdf) and preliminary investigation report on human rights violations and violence perpetrated during demonstrations in Kinshasa between 19 and 21 September 2016 (www.ohchr.org/Documents/Countries/ CD/UNJHROSeptember2016_en.pdf).

27. The High Commissioner has repeatedly condemned the increasing obstruction of the work of the Joint Human Rights Office, whose teams have been denied access to morgues, hospitals and detention centres. Teams have been driven away from certain sites and subjected to threats, intimidation and physical attacks by the defence and security forces, limiting their ability to verify allegations of human rights violations committed during the demonstrations.[6] The launching of an investigation in March 2018 by the military courts in Kinshasa into threats and attacks against staff of the Joint Human Rights Office is an encouraging development.

28. The Joint Human Rights Office has continued to provide technical and financial support for efforts by the National Human Rights Commission, the Parliament and civil society to promote the constitutionality of various bills under consideration relating to the exercise of fundamental freedoms and international rules and standards, and to ensure the protection of human rights defenders and other civil society activists in the exercise of their legitimate activities.[7]

29. Between June 2017 and May 2018, the Joint Human Rights Office organized or supported 155 training sessions throughout the country on human rights issues relating to the electoral process, attended by 9,620 people, including at least 2,694 women — representatives of civil society, the political and administrative authorities, police officers, journalists and political stakeholders. At least 33 of these training sessions focused on the participation of women in the electoral process.

30. The Joint Human Rights Office has also provided legal support and multifaceted assistance in the area of protection and has dealt with 372 cases of threats and human rights violations against 264 human rights defenders, 59 victims, 37 journalists and 12 witnesses of violations — an increase of nearly 84 per cent from the previous reporting period.

B. Protection of civilians in conflict areas

31. The Human Rights Committee urged the Government to take steps to assist and to protect civilian populations in areas of armed conflict and internally displaced persons. It called on the Government to cooperate fully with all United Nations entities in dealing with the allegations of violations of human rights and international humanitarian law in Kasaï (see CCPR/C/COD/CO/4, paras. 26 and 28).

32. During the country's universal periodic review in 2014, it was recommended that the Government take action to eliminate all the negative forces at work in the east of the country. The Committee on the Rights of the Child urged the Government to take measures to protect children from falling victim to armed conflict or participating in armed hostilities, and to punish those who have been involved in killing, maiming and recruiting children (see CRC/C/COD/CO/3-5, para. 18).

1. Current situation and action taken by the Government

33. In conflict areas, the Joint Human Rights Office has documented a significant increase in the number of violations and abuses of human rights. This increase is attributable, among other causes, to the proliferation of militias and armed groups, the aggravation and spread of their activities, and also to violations perpetrated by State officials, in particular during operations against armed groups. During the reporting period, State officials have committed significantly more violations in the conflict areas than the

[6] In direct breach of the commitments entered into by the Government pursuant to Security Council resolution 2348 (2017) and the agreement between the United Nations and the Democratic Republic of the Congo concerning the status of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) (4 May 2000) (which became MONUSCO on 1 July 2010), and the memorandum of understanding of 21 August 1996 on the establishment of a human rights office in Kinshasa.

[7] These include bills on the protection and accountability of human rights, on non-profit associations and public service institutions, on measures to uphold the right to demonstrate and on access to information.

armed groups. The period was also marked by the persistence or resurgence of intercommunal violence, which has serious repercussions on the civilian populations.

34. The provinces of North and South Kivu remain those worst affected by the conflict, North Kivu accounting for more than half of the human rights violations and abuses documented in the provinces in conflict. In these two provinces, armed groups were responsible for 56 per cent of the human rights violations, while, of all the parties to the conflict, the FARDC soldiers bear the greatest responsibility, being involved in more than 25 per cent of all cases.

35. In North Kivu, the Mai-Mai Nyatura fighters are the main perpetrators of human rights violations among armed groups, while those of the Ugandan Allied Democratic Forces conducted particularly deadly attacks against the civilian population in Beni territory, resulting in the deaths of 104 persons (including 13 women and 8 children). Nyatura fighters, often allied to the Democratic Forces for the Liberation of Rwanda, have continued to act in support of Hutu populations in their conflict with the Nande communities, the latter being supported by Mai-Mai Mazembe fighters. In particular, they carried out a number of human rights abuses in Bwito chiefdom (Rutshuru territory) and are the major perpetrators of summary executions (a total of 138 victims, including 28 women and 28 children).

36. South Kivu continued to be affected by the activism of various Mai-Mai groups, some of which have joined forces within the coalition led by William Yakutumba. Most of the violations committed by FARDC soldiers were recorded in Fizi territory, including in the context of military operations against these groups.

37. The resurgence of intercommunal conflict has also been observed in Ituri, where repeated clashes between Hema and Lendu communities have been reported since mid-December 2017 in Djugu territory. At least 270 people, including 94 women, were killed, 29 injured and 120 villages were looted and destroyed on both sides during these hostilities, which have also led to the massive displacement of populations. FARDC and the Congolese national police, which is understaffed, have generally been unable to mount an appropriate response to these attacks or to secure the villages.

38. The activities of Kamuina Nsapu and Bana Mura militia and their violent suppression by FARDC continued to blight the three Kasaï provinces, where the number of violations and abuses of human rights documented was higher than in the previous reporting period.[8] More than 80 per cent of the violations were committed by State officials, including the extrajudicial execution of no fewer than 387 people, at least 12 of whom were women and 46 children. The conflict continued to fuel intercommunal tensions between the Chokwe-Pende (seen as supporting the Congolese defence and security forces) and the Luba-Lulua (accused by the authorities of being Kamuina Nsapu sympathizers), and also between the Kuba and the Kete — the Kamuina Nsapu and the Luba-Lulua people being perceived as supporting the Kete in a conflict which sets them against the Kuba. Since the end of December 2017, the Joint Human Rights Office has documented serious human rights violations in the territory of Mweka (Kasaï), committed during attacks by members of the Kamuina Nsapu militia and by Kuba and Kete militia members in several areas. At least 48 people were killed, 92 injured, and dozens of homes burned down.

39. In Tanganyika province, the conflict between the Twa and Luba communities has caused serious human rights abuses, including numerous deaths and an alarming number of victims of sexual violence by members of armed militias from both communities. The Twa militias are responsible for the summary execution of 59 people and sexual violence against 22 men, 84 women and three children; the Luba militias for the summary execution of at least four men and sexual violence against 15 women and one man. For example, on 3 August 2017, at Lambo Kilela (Kalemie territory), at least 55 people were killed and 26 others injured by Twa militia fighters during their clashes with Bantu units. On 6 August

[8] In total 655, compared with 328 during the previous reporting period. Several of these violations were committed during the previous reporting period but could only be documented during the period under review.

2017, at Kankwala (Nyunzu territory), at least 32 women were raped by Twa militia members during an attack on the village. An alarming spread of the conflict was observed during the reporting period in the Pweto territory, in the neighbouring province of Haut-Katanga.

40. Since September 2017, the human rights situation has deteriorated considerably in Maniema because of the activities of the Mai-Mai Malaika and the wide-scale deployment of FARDC to counter the activities of armed groups. In their operations, FARDC soldiers have used excessive and indiscriminate force, resulting in at least 86 victims of extrajudicial killings, including at least four women and five children. In the course of a single day, 12 December 2017, soldiers from the FARDC commando unit killed 40 civilians in Tenge Tenge, Mombese and Kibenga (Kabambare territory) in retaliation for the death of their commander in an ambush by Mai-Mai Malaika fighters on 10 December 2017.

41. The situation in the areas affected by the conflict has resulted in massive population displacements and exacerbated humanitarian needs. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), the Democratic Republic of the Congo has 4.25 million displaced persons and more than 600,000 have fled to other countries.[9] There is no national strategy or legislation, however, for the protection of and assistance to internally displaced persons.

42. For the first time since 2003, the annex to the latest report of the Secretary-General on children and armed conflict (A/72/361-S/2017/821) makes no mention of FARDC as a party to the conflict by engaging in the recruitment and use of children. The High Commissioner does, however, deplore the large number of killings and maimings of children attributed to FARDC soldiers documented by the Joint Human Rights Office during the reporting period, in particular in the Kasaï region.

2. Action taken by the Joint Human Rights Office

43. The protection of civilians remains a central priority of MONUSCO and the Joint Human Rights Office, including in the context of violence between communities or ethnic or religious groups and during the elections.[10]

44. The Joint Human Rights Office has continued its monitoring and investigation work in the conflict-affected areas and strengthened its presence in the Kasaï and Maniema provinces in order to enhance its capacity to prevent and respond to the challenges of protecting civilians in these areas.

45. The Joint Human Rights Office also organized several capacity-building activities related to protecting civilians and supported the establishment and empowerment of protection networks. These actions have contributed to the creation of 31 protection networks comprising 471 non-governmental organizations in 18 provinces.

3. Human rights due diligence policy

46. During the reporting period, the secretariat of the human rights due diligence policy,[11] placed under the authority of the Director of the Joint Human Rights Office, conducted 200 risk assessments that led to the authorization of United Nations support, often with conditions, for 729 State officials in leadership positions, and for several hundred units of the army, the police and, to a lesser extent, the National Intelligence Agency.

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[9] See www.unhcr.org/democratic-republic-of-the-congo.html (accessed 5 June 2018).

[10] See Security Council resolution 2409 (2018), para. 31 (a).

[11] The human rights due diligence policy seeks to prevent the risk of units of the Congolese security forces to which the United Nations provides support (logistical, operational or training) committing violations of international humanitarian law, human rights or refugee law. See A/67/775-S/2013/110.

47. The procedure for the implementation of the human rights due diligence policy in relation to United Nations country team support for Congolese security forces entered into force on 5 June 2017.

C. Sexual violence

48. The Human Rights Committee urged the Democratic Republic of the Congo to take all necessary measures to ensure that all cases of sexual violence were investigated and that the perpetrators were brought to justice and punished if found guilty. It also recommended physical and psychological support for victims and steps to facilitate their access to legal services (see CCPR/C/COD/CO/4, para. 20). The Committee on the Elimination of Discrimination against Women called upon the State to prosecute all acts of violence against women, punish perpetrators and set up a comprehensive care system for victims (see CEDAW/C/COD/CO/6-7, para. 22).

49. During the universal periodic review of the Democratic Republic of the Congo, it was recommended to the Government, among other actions, that it try all perpetrators of sexual violence, regardless of rank; that it take adequate measures to reduce and eradicate sexual and gender-based violence, including by improving the training of the security forces, and that it provide adequate redress for victims (see A/HRC/27/5, para. 134.60, 134.68, 134.85 and 134.116).

1. Current situation and action taken by the Government

50. During the period under review, some progress has been made in countering impunity for sexual violence, including by classifying certain rape cases as war crimes and crimes against humanity.

51. The Military Court of South Kivu heard several cases that are illustrative of this approach. On 13 December 2017, a provincial deputy and 11 of his co-accused were convicted and sentenced to life imprisonment, including for a crime against humanity involving rape, in a case where dozens of children had been abducted and raped in Kavumu between 2013 and 2016.[12] Furthermore, on 27 January 2018, the Prosecutor's Office attached to the Operational Military Court formally charged the former commander of the armed group Nduma Defence of Congo, Ntabo Ntaberi, alias "Sheka", who had been indicted, among other offences, for masterminding the mass rape of at least 387 women and girls in Walikale (North Kivu) in 2010, on 15 counts, including war crimes involving rape and sexual slavery.

52. In November 2017, the Senate Select Committee on Sexual Violence began work on a bill on reparations for victims of such violence, which seeks to clarify the funding sources and allocation criteria for such reparations.

53. In November 2017, the Supreme Council of the Judiciary and the Inspectorate General of Judicial and Prison Services, with the support of the Joint Human Rights Office, developed evaluation criteria for the prosecution and investigation of sexual violence. The Inspectorate General is now using this instrument to evaluate the work conducted by the judicial services in this area.

54. Nonetheless, sexual violence continues to be perpetrated on a wide scale both by the defence and security forces and by armed groups. During the reporting period, more than 572 women, 243 girls and 28 men were victims of conflict-related sexual violence,[13] marking a significant increase over the previous reporting period.

55. Combatants from the various armed groups and militias were responsible for 74 per cent of these instances of sexual violence, and more than one fourth of them were

[12] The decision was contested and the case was being heard on appeal at the time of finalizing the present report.

[13] These figures are derived from the monitoring, analysis and reporting arrangements on conflict-related sexual violence, in accordance with Security Council resolution 1888 (2009).

committed by State officials. The majority of these (21 per cent of the total number of victims) were attributable to FARDC soldiers. Among the armed groups, Raia Mutomboki combatants and those of the Forces de résistance patriotique de l'Ituri, and members of the Twa and Bana Mura militias are the principal culprits.

56. North Kivu, South Kivu, Tanganyika, the three Kasaï provinces and Ituri remain the provinces where sexual violence is most rampant. The Joint Human Rights Office has documented a worrying number of acts of sexual violence perpetrated by combatants of the Alliance des patriotes pour un Congo libre et souverain (APCLS) since early 2018 in North Kivu. For example, on 3 February 2018, in Lwibo, Bikunje and Muroba (Masisi territory), at least 17 women were raped by APCLS combatants of the Mapenzi faction during attacks against these locations, which had been placed under the control of APCLS combatants of General Janvier Karairi's faction.

57. In his last annual report on conflict-related sexual violence (S/2018/250), submitted on 18 April 2018 to the Security Council, the Secretary-General noted the increase in such violence in the Democratic Republic of the Congo and highlighted the resurgence of ethnically motivated sexual violence observed in Tanganyika province and in the Kasaï provinces, along with the significant number of cases attributable to members of FARDC and the Congolese national police.

58. The Joint Human Rights Office has continued to document acts of sexual violence outside the conflict areas. The principal victims of these are children (41 children and 6 women), and their main perpetrators are Congolese national police officers, in particular in the provinces of Kongo Central (37 per cent) and Kinshasa (33 per cent).

2. Action taken by the Joint Human Rights Office

59. The Joint Human Rights Office has continued its efforts to facilitate access for victims of sexual violence to holistic care. It supported eight legal clinics in North Kivu and South Kivu, which provided free legal assistance to 1,064 victims. Among the cases handled, 199 were referred to the courts, resulting in 87 convictions. In the same provinces, the Joint Human Rights Office also facilitated access to justice by 1,953 victims through the provision of support to the special units of the public prosecutor's offices for action against sexual violence, which resulted in 692 judgments, including 495 convictions.

60. Throughout the country, the Joint Human Rights Office has organized training sessions in preventing and combating impunity for sexual violence. At least 25 doctors and 36 judicial officials have been trained in forensic skills and the judicial procedure for handling cases of this kind, and awareness-raising measures conducted for at least 100 students and 12 teachers on sexual and gender-based violence and the theme of positive masculinity. The Joint Human Rights Office has also conducted a series of training courses for 115 commanders, military judges, intelligence officers and legal advisers of the FARDC operational sector in Kasaï.

61. In addition, the Office has supported the judiciary in establishing measures for the protection of victims and witnesses of sexual violence. As a result, during 17 mobile court hearings, 97 women and 26 girls were provided with protective measures.

D. Efforts to combat impunity

62. The Human Rights Committee requested the Democratic Republic of the Congo to take all necessary measures to end impunity for perpetrators of human rights violations and to ensure that the families of victims had access to effective remedies and reparation. It also called upon the Government to continue its cooperation with the International Criminal Court and to reform the legislative framework to ensure that military courts did not try civilians and that only the ordinary courts were competent to hear cases involving serious human rights violations (see CCPR/C/COD/CO/4, paras. 12 and 38).

I. Current situation and action taken by the Government

63. During the reporting period, the Congolese courts sentenced at least 131 FARDC soldiers, 74 Congolese national police officers and 78 members of armed groups or militias for acts constituting human rights violations, which represents an increase over the previous reporting period. Since the country's law has been brought into line with the Rome Statute,[14] the Congolese courts have been able to try a number of cases categorized as war crimes and crimes against humanity.

64. On 28 April 2018, Maro Ntumba, alias "the Moroccan", a lieutenant-colonel of FARDC, was sentenced to 20 years' imprisonment and the payment of damages to the civil parties by the South Kivu military court, for war crimes involving sexual slavery, looting and cruel, inhuman or degrading treatment or punishment, and for crimes against humanity involving mass rape, attacks against the civilian population and looting, committed between 2005 and 2007 in Kalehe territory.

65. On 22 January 2018, the Operational Military Court closed its mobile courts in Beni after 17 months of investigations, during which it had heard 60 cases involving 179 defendants. Of these, the court had convicted 134 and acquitted the other 45.

66. Major challenges remain in the campaign against impunity and to promote the administration of justice, however. In addition to structural obstacles, such as the shortage of judges, the unequal distribution of courts throughout the country and the lack of material and financial resources, problems related to the lack of judicial independence persist.

67. The national policy for reform of the justice system for the period 2017–2026, which was ratified in May 2017, has not led to the adoption of a programmatic law to ensure effective implementation of the goals set, including by guaranteeing the independence of the judiciary, access to high-quality justice for all, abolition of the death penalty and recognition of the right of appeal to the Operational Military Court.

68. Since the rejection in 2012 of the bill on the establishment of special chambers, no initiative has been proposed by the Government to set in place a system to try crimes of the past, in particular those committed before the entry into force of the Rome Statute.

69. Conflicts arising between the civil and military courts are also creating difficulties, in particular in the processing of cases involving offences under the Rome Statute. The Code of Military Justice still includes certain offences for which civilians may be prosecuted by the military justice system. This raises difficulties of interpretation between the two judicial systems and the issue is frequently raised by civilian defendants claiming their non-justiciability before the military courts.

70. The High Commissioner regrets that Gédéon Kyungu, head of a Mai-Mai group convicted in 2009 by the military courts for criminal liability crimes against humanity (summary executions, rape, looting), participation in an insurrectionary movement and terrorism, for acts committed between 2003 and 2006, has remained free to come and go since turning himself in on 11 October 2016.

71. The inadequacies of the prison system are another major obstacle to the campaign against impunity. Mass escapes continue, facilitated among other factors by the dilapidated infrastructure, the limited numbers and inadequate training of the guards deployed to detention centres, and also by negligence and corruption. At least 1,682 individuals escaped from prisons during the reporting period. In addition, the number of persons held in pretrial detention remains high and the inadequate conditions of detention persist in most prisons, including lack of access to medical care, malnutrition and overcrowding. These conditions contributed to the death of at least 230 prisoners during the reporting period.

[14] This alignment has been achieved through the enactment of the Criminal Code Amendment Act, the Code of Criminal Procedure Amendment Act and the Military Criminal Code Amendment Act (all promulgated on 31 December 2015) and the Code of Military Justice Amendment Act (promulgated on 10 March 2017).

2. Action taken by the Joint Human Rights Office

72. The Joint Human Rights Office has continued to support the civilian and military justice systems in their endeavour to end impunity, through the provision of technical, logistical and financial support for the investigation and prosecution of violations and serious human rights abuses. Between June 2017 and May 2018, the Office supported 22 joint investigation missions and 27 mobile court sessions. In Kasaï, a technical support team deployed by the Office of the High Commissioner, in accordance with resolution 35/33 of the Human Rights Council, together with the Joint Human Rights Office, provided technical assistance to the judicial authorities in the conduct of investigations into allegations of violations and serious human rights abuses. The joint investigations were initiated by the Kananga chief military prosecutor (in Kasaï Central) on 31 May 2018.

73. The Joint Human Rights Office has assisted and provided protection to 996 victims, including 399 women and 25 children, in investigation missions conducted jointly with the judicial authorities, and to 559 victims, including 120 women and 20 children, in mobile hearings. In addition, in the course of 10 protection missions carried out before the joint investigation missions and mobile hearings, the Office identified 1,144 victims, including 574 women and 36 children, and informed them about their rights.

74. In August 2017, the Joint Human Rights Office ran a training course on international crimes for judges of the appellate courts, military courts, public prosecution services and higher military prosecutor's offices of Kongo Central, Maniema, Kasaï Central, Kasaï Oriental, Bandundu and Kinshasa.

III. Cooperation with the United Nations human rights mechanisms and national mechanisms to promote and protect human rights

A. Follow-up to the recommendations of the universal periodic review and other United Nations mechanisms

75. The Interministerial Human Rights Committee, which is responsible for drafting reports and following up the implementation of recommendations of the treaty bodies and the universal periodic review, continues to have difficulty in fulfilling its mandate.

76. On 26 October 2017, the General Assembly voted in favour of the admission of the Democratic Republic of the Congo to the Human Rights Council. The Democratic Republic of the Congo has served on the Council since January 2018 and will hold its seat until the end of 2020, and must therefore uphold the highest standards in the promotion and protection of human rights, fully cooperate with the Council and submit to the universal periodic review mechanism during its mandate. The High Commissioner notes that the Government made voluntary commitments in September 2017 when submitting its candidacy.

B. Update on national mechanisms for the protection and promotion of human rights

77. The National Human Rights Commission continues to suffer from a lack of human, financial and material resources, constraining it in the exercise of its mandate. It has, however, visited a number of detention centres and secured the release of a large number of persons in pretrial detention. With the support of the Joint Human Rights Office, the Commission has also carried out several human rights training and awareness-raising activities. It has also worked on the drafting of opinions and proposals to Parliament for the harmonization of the bill on the protection and accountability of human rights defenders.

78. Among other outputs, the Commission has published two investigation reports into the human rights violations committed in connection with the demonstrations of 31 January 2017 and 21 January 2018 in Kinshasa, a report on the inquiry into the situation in Kasaï

Central in 2016–2017 and an annual report on its activities. Three Commission delegates have been seconded to the joint commission to investigate allegations of human rights violations in connection with the demonstrations of 31 December 2017 and 21 January 2018 in Kinshasa, and have supported its investigative work and the preparation of its final report.

IV. Conclusions and recommendations

A. Conclusions

79. **During the reporting period, the human rights situation in the Democratic Republic of the Congo has been characterized by a sharp increase in encroachments on civil liberties and a continued shrinking of the democratic space. The persistence of acts of harassment, threats and intimidation against journalists, political opponents and human rights defenders, together with the prohibition and violent breaking up of peaceful demonstrations by State agents, is of particular concern as the elections scheduled for December 2018 draw nigh.**

80. **The increased activism of armed groups and the response by the State has continued to result in serious human rights violations in conflict areas, including an alarming number of cases of sexual violence.**

81. **It is essential to support the efforts to counter impunity observed during the reporting period and urgently to open up the democratic space, with the aim of creating the necessary conditions for an electoral process which is inclusive, peaceful and credible.**

B. Recommendations

82. **The High Commissioner recommends that the Government of the Democratic Republic of the Congo:**

(a) **Guarantee protection of the rights and freedoms of all persons, including political opponents, journalists and other civil society activists, and ensure that any restriction of these freedoms is consistent with the principles of legality, necessity and proportionality, in conformity with international law;**

(b) **Proceed with the immediate release of all political prisoners and prisoners of opinion, in order to create conditions conducive to the holding of inclusive, peaceful and credible elections, in accordance with the Global and All-Inclusive Agreement of 31 December 2016 and the electoral timetable of 5 November 2017;**

(c) **Forthwith lift the blanket ban on demonstrations imposed throughout the country and enact without delay the law establishing modalities for ensuring the freedom to demonstrate in accordance with the Constitution and the international obligations of the Democratic Republic of the Congo;**

(d) **Ensure that the use of force by State agents, including in the context of crowd management operations and military operations against the armed groups and militias, strictly complies with the rules of international human rights law and international humanitarian law;**

(e) **Conduct as soon as possible independent, thorough, credible, transparent and impartial investigations into allegations of serious human rights violations and abuses, including those committed by State officials in the context of demonstrations and by all parties in the provinces affected by the conflict, bring the presumed perpetrators to justice and ensure prompt and proper redress for the victims;**

(f) Ensure that the bill on the protection and accountability of human rights defenders, and also that on the general provisions applicable to non-profit associations and to public service institutions fully guarantee the rights of all persons to the protection and promotion of human rights, do not infringe the rights to freedom of expression, peaceful assembly and association, and are adopted by Parliament in those terms;

(g) Promote the participation of women in the political sphere, including by amending the electoral law to include temporary special measures such as mandatory quotas for women candidates in party lists;

(h) Ensure the independence of the judiciary by desisting from all interference in its operations and furnish the judicial authorities with the necessary means to carry out their tasks;

(i) Prohibit incommunicado detention, close all secret detention facilities, release the detainees still held in those facilities and place all places of detention under judicial oversight, including those of the National Intelligence Agency and military intelligence headquarters;

(j) Uphold the right of every accused person to be tried within a reasonable time by an independent and impartial tribunal, with due respect for the rights of the defence, that it recognize the right of appeal to the Operational Military Court and that it abolish the death penalty;

(k) Improve the living conditions and treatment of detainees in prisons, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners;

(l) Take all necessary measures to prevent sexual and other forms of gender-based violence, bring perpetrators to justice and provide victims with holistic care and remedies for redress;

(m) Ensure that the National Human Rights Commission becomes fully operational, including by allocating to it the necessary financial and logistic resources and by guaranteeing its independence, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles);

(n) Strengthen the national institutions and mechanisms responsible for coordinating and following up the application of recommendations of United Nations human rights mechanisms;

(o) Strengthen its collaboration with the Joint Human Rights Office, MONUSCO and other partners to improve the protection of human rights in the country and to combat impunity, including by ensuring the safety and complete freedom of movement of United Nations personnel throughout the country and by cooperating fully with the monitoring and verification missions undertaken by staff of the Joint Human Rights Office, including by granting them full access to detention centres.

Annex

Overview of the principal human rights violations documented in the Democratic Republic of the Congo